

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No.21755 of 2004

Between:

M.Kanaka Durga W/o.M.Venkat Rao
R/o.19-A/MIG, P.S.Nagar Colony Near Vijaynagar Nursing

Home, Masabtank, Hyderabad.

..... PETITIONER

AND

The A.P. Co-operative Bank Limited P.B.No.142, Troop Bazar, Hyderabad Rep. by
its Managing Director.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ, order or orders, direction or directions by directing the Respondent to release the Title Documents pertaining to the House Property of the Petitioner bearing No.19-A/MIG, P.S.Nagar Colony, Near Vijaynagar Nursing Home, Masabtank, Hyderabad, to pay the Gratuity amount to the petitioner for her service rendered in the Bank, to pay the pension to the Petitioner from 12.4.2004 and to issue such consequential directions to the Respondent to act in accordance with law.

Counsel for the Petitioner:MR.V.SRINIVAS

Counsel for the Respondent : MR.D.S.N.V.PRASADA BABU

The Court at the admission stage made the following O R D E R:

The petitioner seeks a direction to the respondent-bank to release the title deeds pertaining to the House property bearing No.19-A/MIG P.S. Nagar Colony, near Vijayanagar Nursing Home, Masab Tank, Hyderabad; and to pay the gratuity amount for the service rendered by her in the respondent-bank and also to pay pension from 12.04.2004.

According to the petitioner, she discharged the entire house loan by 29.06.1999 that was taken by her husband. There is serious dispute between the petitioner and the respondent-Bank with regard to return of title deeds. Therefore, the petitioner got issued a legal notice dated 11.10.2004 for return of the title deeds. The grievance of the petitioner is that inspite of issuance of legal notice, the respondent-Bank has not taken any steps. The petitioner also questions the respondent-bank for not paying the gratuity amount and pension. Hence the writ petition.

In the counter affidavit filed on behalf of the respondent-Bank, it is stated by the General Manager of the Bank that the relevant title deeds were returned to her on 11.12.2001 under due acknowledgement.

With regard to returning of title deeds, since there is serious dispute between the parties, this Court cannot decide the same in this writ petition under Article 226 of the Constitution of India. However, petitioner is at liberty to agitate the same before the appropriate forum.

So far as second contention with regard to payment of gratuity is concerned, the

employer can withhold the gratuity amount.

Section 4(6) of the Payment of Gratuity Act, 1972, which reads as under:

Notwithstanding anything contained in Sub-section (1),--

- a. the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employee, shall be forfeited to the extent of the damage or loss so caused,
- b. the gratuity payable to an employee [may be wholly or partially forfeited]
- iii. if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
- i. if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

Admittedly, in the present case, the petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881, which has nothing to do with the discharge of official duties in the office. Therefore, Section 4(6) has no application to the present facts of the case. Hence, withholding the gratuity amount is contrary to the Act and, therefore, petitioner is entitled for the gratuity amount. The petitioner did not challenge the proceedings of termination issued by the person-in-charge committee dated 12.04.2004. Learned counsel for the petitioner stated that the dismissal order cannot be passed with retrospective effect. Therefore, the petitioner is entitled for the gratuity amount and that the respondent-bank is directed to pay the gratuity amount within a period of two months from the date of receipt of a copy of this order.

To the extent indicated above, the writ petition is allowed. No costs.

(K.C.BHANU, J)

Dt. 15.03.2005

usd

To

1 The Managing Director, A.P. Co-operative Bank Limited

P.B.No.142, Troop Bazar, Hyderabad.

2 Two CD copies.